

CHARLESTON NAVAL BASE HISTORICAL TRUST AGREEMENT

Consistent with the Memorandum of Agreement (“MOA”) by and between the United States Army Corps of Engineers, Charleston District (“USACE”), Federal Railroad Administration, Palmetto Railways, a division of the South Carolina Department of Commerce, Advisory Council on Historic Preservation (“ACHP”), the Muscogee (Creek) Nation, and the South Carolina State Historic Preservation Officer (“SHPO”) regarding the Navy Base Intermodal Facility Project in Charleston County, South Carolina, this Agreement creating the Charleston Naval Base Historic Trust (“CNB Historical Trust”) is made this ____ day of _____, ~~2019~~2020, by and between the Governing Board, as hereinafter defined, for the purpose of preserving and rehabilitating the historic structures of the Charleston Naval Hospital and the United States Marine Corps Barracks at the Charleston Naval Base.

WHEREAS, the MOA established certain avoidance, minimization, and mitigation measures related to resource protection of properties located within the Charleston Naval Complex (“CNC”) and the United States Marine Corps (“USMC”) Barracks.

WHEREAS, one such measure called for Palmetto Railways to establish the CNB Historical Trust.

WHEREAS, the purpose of the CNB Historical Trust, as specified in the MOA, is the preservation and rehabilitation of historic structures in the CNC and USMC Barracks, consistent with the Programmatic Agreement, entered in or about May 1995 by the Department of the Navy, SHPO, and ACHP.

WHEREAS, the MOA calls for the establishment of a Governing Board of not less than one representative of the City of North Charleston, one representative of each concurring party of the MOA, including Historic Charleston Foundation (“HCF”), Preservation Society of Charleston (“Preservation Society”), and the Naval Order of the United States, Charleston Commandery (“Naval Order”), one representative of the Charleston Naval Complex Redevelopment Authority (“RDA”), one representative of Palmetto Railways, and one representative of SHPO.

WHEREAS, the MOA requires Palmetto Railways to fund the CNB Historical Trust in the amount of Two Million and No/100 Dollars (\$2,000,000.00), under certain installment payments, including Five Hundred Thousand and No/100 Dollars (\$500,000.00) and five (5) subsequent annual installment payments of Three Hundred Thousand and No/100 (\$300,000.00) on the anniversary date thereafter of the initial payment (collectively the “CNB Historical Trust Fund”).

WHEREAS, the MOA contemplates that the duration of the CNB Historical Trust shall be for as long as the Governing Board is actively implementing the rehabilitation and preservation efforts of the historic structures in the CNC and USMC Barracks, which is understood to encompass all pre-expenditure activities such as planning or due diligence, up through the expenditure of the CNB Historical Trust Fund and shall terminate upon the exhaustion of the corpus, and all accrued interest, of same.

WHEREAS, the MOA provides that Palmetto Railways may, in its discretion, transfer title of all or a portion of the CNC to third parties for nominal consideration, subject to state approvals

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and SHPO's consent, and in consultation with the CNB Historical Trust through the provision of notice by Palmetto Railways to the Governing Board of its proposed transfer at the time SHPO's consent is sought, so long as the restrictions on the redevelopment of the properties, including rehabilitation and preservation, set forth in the covenants of the Programmatic Agreement are transferred with properties to the purchasing third parties.

WHEREAS, the Governing Board acknowledges and agrees that the CNB Historical Trust Fund is intended to be a flexible funding mechanism that can be used, consistent with approval of the Governing Board and the purpose of the CNB Historical Trust as set forth herein, for example, to pay for stabilization measures of the CNC and USMC Barracks properties, or as seed money for private redevelopment.

WHEREAS, the MOA provides and the Governing Board does hereby acknowledge and agree that, subject to SHPO's prior consent and approval, and with notice provided to the Governing Board as set forth above, rehabilitation and re-use of the CNC and USMC Barracks properties through redevelopment may include use for residential, commercial, office, mixed-use, and retail space.

NOW THEREFORE, Palmetto Railways, SHPO, the City of North Charleston, HCF, Preservation Society, the Naval Order, and RDA do hereby agree to the establishment of the CNB Historical Trust as set forth herein and as implemented in accordance with the following terms:

1.0 Name. This Agreement does hereby establish the CNB Historical Trust.

2.0 Purpose. The purpose of the CNB Historical Trust is the preservation and rehabilitation of the historic structures in the CNC and the USMC Barracks at the former Charleston Naval Base.

3.0 Definitions. As used in this Agreement, the following terms shall have the indicated meanings:

"Governing Board" shall mean the Governing Board of the CNB Historical Trust, as constituted in accordance with Article 2.E.1 of the MOA, and any duly approved successor documents, updates or amendments thereto.

"Memorandum of Agreement or MOA" means the Memorandum of Agreement among the U.S. Army Corps of Engineers, Charleston District; Federal Railroad Administration or other U.S. Department of Transportation Agency; Palmetto Railways; Advisory Council on Historic Preservation; Muscogee (Creek) Nation; and the South Carolina State Historic Preservation Officer Regarding the Navy Base Intermodal Facility Project in Charleston County, South Carolina.

"Person" means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization or governmental entity.

"Purpose" means the purpose for which the Trust is formed as described in Paragraph 2.0.

"CNB Historical Trust Fund" means the contributions set forth in Schedule A and any additional property and rights that may be contributed or assigned to the CNB Historical Trust or otherwise become a part of the CNB Historical Trust, including without limitation any property, rights or derivative works created using any of the foregoing or other CNB Historical Trust Fund which are assigned to the CNB Historical Trust in accordance with the terms of this Agreement.

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4.0 Contribution of Funds. Palmetto Railways hereby does irrevocably pay over, assign, grant, convey, transfer, and deliver unto the CNB Historical Trust the property described in Schedule A of this Agreement.

5.0 Bank Account. The Governing Board shall, promptly after the execution of this Agreement, establish and maintain an interest-bearing bank account in the name of the CNB Historical Trust and may receive funds for the CNB Historical Trust, as appropriate, to be held in such bank account.

6.0 Governing Board.

(a) The members of the initial Governing Board consist of not less than one representative from each of the following entities: The City of North Charleston; the RDA; Palmetto Railways; the SHPO; HCF; the Preservation Society; and the Naval Order. By executing this Agreement, the individuals listed on the signature page to this Agreement under the heading "Initial Governing Board" are agreeing to become, and to fulfill the duties of, representatives of their respective member of the Governing Board of the CNB Historical Trust hereunder, and no further writing or instrument shall be necessary in order for such individuals to become representatives of their respective members on the Governing Board. Each member of the Governing Board shall have one vote on all matters coming before the Board.

(b) Any individual initial representative of a member of the Governing Board may, by written instrument, signed and acknowledged, resign his or her position. Upon the resignation or death of any individual representative, the member entity for whom the resigning or deceased individual represented shall designate a successor representative. Each of the member entities to this Agreement may at any time replace the individual designated as its representative on the Governing Board by submitting written notice to the Governing Board. Any successor individual representative shall succeed to all of the powers, authorities, rights, discretions, immunities, estates, titles, duties and obligations of a member representative, without the necessity of any conveyance or the taking of any action whatsoever.

7.0 Officers. The officers of the Governing Board may consist of a chairperson, a vice chairperson, and a secretary, as deemed necessary by vote of the Governing Board. Officers may be elected at a regularly scheduled meeting or a special meeting called for that purpose, for a term set by the Governing Board.

8.0 Meetings.

(a) Meetings of the Governing Board may be held as directed by the chairperson with input from the other representatives. The Governing Board will meet as necessary to carry out its mission and obligations at such location within the State as the chairperson may designate. Any or all representatives of the Governing Board may attend and participate in a meeting by, or conduct the meeting through the use of, telephone or other electronic communication by which all representatives participating may simultaneously hear each other and communicate with each other during the meeting. A member participating in a meeting by this means is deemed to be present in person at the meeting.

(b) In the event the designated representative of a Governing Board member is unable to attend a meeting, he or she may designate another member of the Governing Board to act as a proxy. Voting by proxy is authorized only under the following conditions:

- (1) The proxy must be in writing and:

(i) state that it is general and shall apply to any and all matters that may come before the Board and that the member to whom the proxy is given may vote that proxy as he or she deems appropriate; or

(ii) state the specific issue(s) for which the proxy is given and shall specify the vote that is to be cast on that issue(s).

(2) A proxy is valid for one Governing Board meeting.

(c) The chairperson will preside at all Governing Board meetings; in the chairperson's absence, the vice chairperson will assume such duties. In the absence of both chairperson and vice chairperson, the representatives present shall, by a simple majority vote, appoint one of their numbers to preside, provided a quorum is present.

(d) The secretary, or in the absence of a secretary the chairperson, shall produce an accurate account of all Governing Board meetings.

9.0 Decision-making. A quorum for a meeting of the Governing Board shall be a majority of the representatives of the Governing Board. Except as otherwise provided in this Agreement all decisions of the Governing Board must be approved by majority vote. No individual member of the Governing Board shall have the power to act or bind the CNB Historical Trust unless specifically so authorized in writing.

10.0 No Prudent Investor Standard. The Governing Board shall not be required to follow any "prudent investor" or any similar rule, and in particular, the "prudent investor" or any similar rule shall not constitute, or be deemed to constitute, a basis for the exchange, distribution, assignment, sale, transfer, conveyance, grant of an option on, or encumbrance on the CNB Historical Trust Fund. The Governing Board shall not be under any obligation to diversify the CNB Historical Trust Fund.

11.0 No Liability for Acts of Predecessor Individual Member. No individual member of the Governing Board shall be responsible or liable for the acts or omissions of any predecessor member of the Governing Board, or of a custodian, agent, depository or counsel selected with reasonable care.

12.0 Limitation of Governing Board Liability. No member of the Governing Board shall be liable to the CNB Historical Trust or any other person for monetary or other damages for breach of fiduciary duty as a member of the Governing Board to the maximum extent permitted by South Carolina law.

13.0 Term. The term of the CNB Historical Trust shall be the exhaustion of the CNB Historical Trust Fund through expenditure of those funds by vote of the Governing Board, or seventy-five (75) years, whichever occurs first.

14.0 Reversion; Distributions Upon Dissolution. Upon the termination or dissolution of the CNB Historical Trust for any reason, any remaining assets of the CNB Historical Trust Fund, including any unused principal or income, shall revert back to and be distributed to Palmetto Railways or its successor in interest after the payment or making provisions for the payment of all of the liabilities of the CNB Historical Trust; however, those funds must be used in furtherance of the Purpose. Should for any reason Palmetto Railways or its successor in interest not be able to receive the assets of the CNB Historical Trust Fund, then those assets shall be distributed to an organization to be used in furtherance of the Purpose after the payment or making provisions for the payment of all of the liabilities of the CNB Historical Trust. Any assets of the CNB Historical Trust Fund not so disposed of shall be disposed of by a court of competent jurisdiction in Charleston County, South Carolina, exclusively for such purpose.

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15.0 Income. After payment of all expenses of administering the CNB Historical Trust and maintaining the assets of the CNB Historical Trust Fund, any part or all of the net income of the CNB Historical Trust may, in the absolute discretion of the Governing Board, be retained or used in furtherance of the Purpose, at such intervals and in such amounts as the Governing Board from time to time deem requisite or desirable and/or to comply with any applicable legal requirements. Any net income not paid or applied shall be added to and become a part of the principal of the CNB Historical Trust.

16.0 Principal. After payment of all expenses of administering the CNB Historical Trust and maintaining the assets of the CNB Historical Trust Fund, in the absolute discretion of the Governing Board, the principal shall be retained or used in furtherance of the Purpose, at such intervals and in such amounts, as the Governing Board from time to time deem requisite or desirable and/or to comply with any applicable legal requirements.

17.0 Expenses. The Governing Board shall pay from amounts contributed by third parties or from the assets of the CNB Historical Trust Fund the expenses of administering the CNB Historical Trust, which may include, but shall not be limited to, the reasonable costs of administering the CNB Historical Trust, including legal and accounting fees, as appropriate, the payment of filing fees and maintenance fees for the assets of the CNB Historical Trust Fund, and the reasonable costs incurred in administering the CNB Historical Trust. It is further understood that the representatives of the Governing Board shall serve in that capacity without compensation and shall not be entitled to reimbursement for expenses incurred for their representative service on the Governing Board including, for example, travel costs or per diem associated with attendance of meetings.

18.0 Use of the Trust Assets. The assets of the CNB Historical Trust Fund shall be used solely in furtherance of the purposes as set forth herein.

19.0 Amendments. The Governing Board may unilaterally amend the provisions of this Agreement, except that no amendment shall be made with respect to the requirement that the CNB Historical Trust be used in furtherance of the Purpose or subject to the provisions of Sections 2.1 and 8.4.

20.0 Severability. Each provision of this Agreement is intended to be severable. If any provision in this Agreement is held to be invalid, void, or unenforceable by a court of competent jurisdiction for any reason whatsoever, such ruling shall not affect the validity of the remainder of this Agreement.

21.0 Successors and Assigns; Third Party Beneficiaries. Except as expressly provided herein, neither this Agreement nor any rights or obligations hereunder may be assigned, delegated, or otherwise transferred. Any attempted assignment, delegation or transfer that does not comply with the provisions of this section shall be null and void. Nothing in this Agreement, express or implied, is intended to or shall confer upon any third party any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement unless expressly provided herein.

22.0 Entire Agreement. This Agreement constitutes the entire agreement with respect to the subject matter addressed herein, supersedes all prior or contemporaneous agreements, discussions, representations, whether oral or written, with respect to the subject matters addressed herein. Each party to this Agreement acknowledges that no promises, representations, inducements, agreements, or warranties, other than those set forth herein, have been made to induce the execution of this Agreement by said party. Each party acknowledges that it has not executed this Agreement in reliance on any promise, representation, inducement, or warranty not contained herein. Notwithstanding the

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foregoing, nothing herein shall supersede, nullify, or otherwise be construed so as to affect the rights and obligations set forth in the Memorandum of Agreement.

23.0 Governing Law. This Agreement is intended to be interpreted, construed, enforced, and governed by, under, and in accordance with the provisions of the laws of the State of South Carolina, without giving effect to the conflict of law rules and principles thereof.

24.0 Counterparts. This Agreement may be executed in multiple originals, each of which is equally admissible in evidence and shall be deemed to be one and the same instrument. Photocopies or facsimile copies of executed originals of this Agreement may be treated as originals.

25.0 Conflict of Interest. The Governing Board shall address real or apparent conflicts of interest as dictated by the guidelines set forth by the South Carolina State Ethics Act.

26.0 Release of Information. Information concerning the Governing Board's business or negotiations shall be released only by the chairperson or someone else specifically designated by the Governing Board, and consistent with the Freedom of Information Act to the extent applicable.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their authorized representatives as of the date first above written.

SETTLOR

PALMETTO RAILWAYS

By: Jeff McWhorter
President and CEO

INITIAL REPRESENTATIVES:

Representative of the City of North Charleston

Representative of the Charleston Naval Base Redevelopment Authority

Representative of the State Historic Preservation Officer

Representative of the Historic Charleston Foundation

Representative of the Preservation Society of Charleston

Representative of the Naval Order of the United States, Charleston Commandery

Jeff McWhorter
Representative of Palmetto Railways

SCHEDULE A – CONTRIBUTED FUNDS

Settlor shall pay over to the Trust the amount of Two Million and No/100 Dollars (\$2,000,000.00), with payments to be made in accordance with this Schedule A.

Initial Payment – Settlor hereby makes an Initial Payment, as of the Effective Date, of Five Hundred Thousand and No/100 Dollars (\$500,000.00).

Subsequent Payments – Settlor shall, consistent with the Memorandum of Agreement, make five (5) annual payments in the amount of Three Hundred Thousand and No/100 Dollars (\$300,000.00) to be paid to the Trust on the anniversary of the Initial Payment.